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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,044	01/30/2002	Patrick J. Butler	1348.105-US	4467

7590 07/24/2006  
EPSTEIN & GERKEN  
1901 RESEARCH BOULEVARD  
SUITE 340  
ROCKVILLE, MD 20850-3164

EXAMINER

AWAI, ALEXANDRA F

ART UNIT	PAPER NUMBER
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3663

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/059,044

Applicant(s)

BUTLER ET AL.

Examiner

Alexandra Awai

Art Unit

3663

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☒ Newly proposed or amended claim(s) 2,4,8,9,12-14,16 and 18 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2,4,8,9,12-14,16 and 18.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,3,5,6,10,11,15 and 17.

Claim(s) withdrawn from consideration: 7.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(b)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_.

13. ☐ Other: \_\_\_\_\_.

**JACK KEITH**  
**SUPERVISORY PATENT EXAMINER**

Continuation of 3. NOTE: Applicant fails to persuasively argue that the previous rejections under U.S.C. 103 are inapplicable. If Applicant's arguments were persuasive they would essentially call upon Examiner to carefully reconsider the claims and cited art, as well as continue the search for applicable art.

With regard to Examiner's failure to positively identify certain structures, it is considered that the first and second members read on the first and second clamp members of the claims, and such was clear from the Office Action. Furthermore, Examiner clearly argues that the recesses and shoulders recited are encompassed by an obvious change in shape (Office Action, p. 7). For example, a clamp with a pair of inner walls (i.e., the recited surfaces) is obvious in view of the state of the art of clamps. Even though the clamp disclosed by Jensen et al. is not ideally suited to clamp a feedwater sparger end bracket assembly, Applicant has provided no compelling evidence that it would be incapable of constraining the bracket assembly against disconnecting to a certain degree. It is obvious that the curved sides of the clamp might hinder the constraining, but it is unreasonable to argue that a skilled artisan, upon viewing that the object to be constrained has an angular cross section, would not be motivated by what is already known to modify the clamp to have an angular cross section. Clamps with angular inner walls are certainly not unknown. Jensen et al. may offer certain teachings that are inapplicable or not ideally applicable to the intended use of the current invention, but that is not evidence that the disclosure of Jensen et al. as a whole "teaches away" from the specific use discussed by Applicant. The statement that "the curvature of the clamp member may be positioned to confine the attachment plate and end plate" is a reality that any skilled artisan might easily visualize. That is, as long as the clamping members of the prior art are positioned externally to the attachment plate and end plate such that they oppose the movement of those two parts away from each other, "confinement" or "constraintment" is achieved.

Applicant has failed to show why it is not obvious to adapt the inner surfaces of a clamp to more extensively circumscribe the restrained object. With regard to Pirhadi, Examiner has not relied upon motivations found in that document, but rather, only the structure. Nevertheless, the teachings regarding the purpose of that structure remain applicable to the present case because they show that the skilled artisan is perfectly capable of configuring the inner surfaces of a clamp to achieve the desired effect. It is known to make these inner surfaces curved or angular or corrugated, etc. and such requires no more than known metalworking or molding technology. For example, the curved surfaces of Jensen et al. would no doubt cause deformations were they tightened around an angular object. Pirhadi teaches configuring the inner surfaces of a clamp to place confining force on the clamped object such that deformation is avoided (Remarks, p. 32). This teaching is entirely applicable to the obviousness argument, and a skilled artisan would readily appreciate how to carry out such a modification of the clamp's shape.